Peter Hedges Grosscup

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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Peter S. Grosscup.

Peter Stenger Grosscup was born February 15, 1852, at Ashland, Ohio. His lineage on his father's side runs back to Holland; on his mother's to Germany; but all the ancestors have been in this country from before the Revolution. His great-grandfather, Paul Grosscup, was for many years a member of the Pennsylvania Colonial Assembly, and, afterwards, of the Pennsylvania State Assembly, as, also, of the convention that in 1789, at Philadelphia, framed the first Constitution. The connections on the father's side also include the Stengers, well known in Pennsylvania politics and at the bar.

His mother's name was Bowermaster, whose grandfather held a commission in the Revolutionary War, and whose father was a soldier in the War of 1812. On this side, he is connected with the Studebakers, well known in the business world, as, also, with the Mohlers, some of whom are well known in railway circles.

He was educated in the schools of Ashland, and in Wittenberg College, one of the educational institutions of the Lutheran Church, graduating in 1872, at the head of his class. He obtained his degree of Bachelor of Laws from the Boston Law School.

He practised law in Ashland, Ohio, from 1874 to 1883, being city solicitor for six years of that time. In 1876 he was a candidate of the Republican party for Congress, but was defeated. Coming to Chicago in 1883, he entered the law firm headed by Leonard Swett, a former law partner of Abraham Lincoln, and the best known lawyer, at that time, of the West. From this time he participated in some of the most important trials occurring in the West, and built up his reputation as a lawyer.

December 12, 1892, he was appointed to the United States District Bench by President Harrison. Soon after going upon the bench, he attracted the attention of the entire country in his decisions upon the application of the government to close up the World's Columbian Exposition on Sundays. He dissented from the two circuit judges on that occasion. On an appeal to the Circuit Court of Appeals, presided over by Chief Justice Fuller, this dissent was sustained.

His most widely known service, however, was in connection with the Debs riots in 1894. In connection with Circuit Judge William A. Woods, he issued the injunction in favor of the government and against the rioters on that occasion. When this injunction was spurned by the rioters, he called upon the President for the Federal troops,—a call that unquestionably saved the city from mob violence. Summoning the grand jury at the earliest day possible by law, he delivered to them, on their assembling in the midst of the riots, a charge that gave him an instant national reputation. This indictment, and arrests that followed, were the beginning of the end of mob violence.

In January, 1899, on the death of Judge

Showalter, he was promoted to the bench of the Circuit Court of Appeals, a place he now occupies.

Besides deciding many cases of national importance, Judge Grosscup has delivered occasional addresses that have attracted the attention of the country. The most notable, perhaps, was the one at Indianapolis in June, 1896, upon "The American Lawyer, and His Duty to the Public," which had a circulation of more than one hundred thousand copies. At the Saratoga Conference, in August, 1898, he led against Carl Schurz the expansion forces, and his speech, on that occasion, was published throughout the country, attracting the attention, also, of the English papers.

The eloquence of Judge Grosscup in his public addresses is of a high order. It involves unusual virility, incisiveness, and elevation of thought. Some of his striking utterances have been hitherto quoted in these columns.

By his personality, as shown both in private and public life, Judge Grosscup has made many warm friends. In his relations of friendship, in his performance of official duty, and by his keen, active interest in every great question of social and national life, he is a typical example of the best citizenship.

The Scandal in Cuba.

The dishonesty of civil officers of the United States in Cuba is a crime for which no punishment is great enough. It is in no degree less infamous than the treachery of a general in war. It brings disgrace on the American name throughout the world, and gives color to the miserable lying allegation that this nation's intervention in behalf of Cuba was purely selfish and hypocritical. For such supreme wrong to his nation, by a man of enough education and training to get appointed to an official position, he deserves a severer penalty than the government can inflict. For moral degradation of the offender, for heinousness of the offense, for the magnitude of the wrong done to the reputation of the American people, such crime exceeds that for which many a soldier has been blindfolded and shot. Patriotic citizens demand that the frauds in Cuba shall be probed to the bottom, and the offenders dealt with to the full extent of the law, without fear or favor. Any partisanship either in prosecuting or in protecting such criminals is but little above the level of the crime itself.

Threats of Revolution.

The newspapers report that a speaker at a recent political banquet spoke of the possibility or the probability that a revolution would be necessary before the masses of the people could obtain their rights. The report may be altogether false or greatly distort what was said. If the utterance was made, it may have been due to the lateness of the hour and the liberality of the speaker's potations. If not excused by temporary irresponsibility or by weakness of brain, such an utterance ought to make the speaker an outlaw. Sane, intelligent men cannot honestly believe that any revolution could be a benefit to our people. A fanatic can believe anything; and a bitter partisan not caring for the truth of what he says may recklessly cultivate suspicion and hatred for partisan purposes. Such a man would be a dangerous public enemy if the people were ignorant enough to be misled.

We have a government by majorities. The masses of the people can get anything which they choose to demand. If any of their rights are infringed, all they need to do is to get a majority to agree on a remedy and unite in demanding it. A majority of the voters working together can put men of their own choice into power, and, within the range of the Constitution, enact any laws they desire. Fuller power and opportunity could not exist. If needed laws are not enacted or enforced, it is simply because a majority of the people have not yet chosen to unite in a demand therefor. No revolution could improve the situation in this respect. If a majority are not now wise enough or patriotic enough to act for the public welfare, they will not be likely to become so by overturning the government. Intelligence and character among the people can accomplish any and every reform under our present government. Without such intelligence and character they are incapable of self-government, and, if led into revolution, would go into it as dupes and victims.

Honest, but unthinking, persons may be deluded by the noisy and passionate talk of their false friends. Yet even the typical wayfaring man can see, when he thinks of the matter, that in this country of majority government an advocate of revolution must be feeble minded or evil intentioned.

Decline of Oratory.

At frequent intervals someone proceeds to discourse on the marked decline of oratory,

especially at the bar. England's Lord Chief Justice has recently spoken words of caution to law students against overrating the importance of eloquence in legal proceedings. Commenting on this, and pointing out that Lord Russell's design was not to depreciate the power or value of eloquence, which his own career has illustrated, the "London Law Journal" says: "The palmy days of oratory are past. The last half century has witnessed a great decline in it. In Parliament, except on set occasions and full dress debates, it is conspicuous by its absence. The legislature has become more and more of a business assembly, not because there is any lack of appreciation of true eloquence, but because the growth of the scientific spirit has created a demand for thoroughness in everything, and a corresponding intolerance of any treatment of a subject which is merely superficial, showy, and rhetorical.

"In courts of law this applies with peculiar force. Nearly all judges have strong objection to being oratorically treated. An impassioned appeal to a jury in a *nisi prius* or criminal case may do now and then, but even for juries plain common sense is the most telling; while in construing acts of Parliament, in dissecting authorities, in the administrative business of chancery, eloquence is ludicrously out of place. What is never out of place, however, is clearness of language, compactness of thought, and above all the *lucidus ordo*."

But the "Law Journal" also points out that "oratory is but the crown and consummation of a score of other accomplishments wholly different from that verbosity or glibness which flows with fatal facility in one weak, washy, everlasting flood," and that "what makes the impressive speaker, the true orator, is not any glibness of tongue, but a convincing earnestness, the power of inspiring confidence in his hearers, which only a man of high character and proved integrity possesses."

The oratory of fustian or buncombe aims at temporary effects, and obtains them by exaggeration and tricks which the victim afterwards resents with a sense of injured self-respect. But the truest oratory not only captures men while they listen, but gives them in the retrospect a consciousness of having been permanently enlightened, uplifted, and enlarged. With increase of intelligence men are less attracted by oratorical tinsel, less moved by the mere contagion of emotion, and more skilful in detecting sophistry and the mere tricks of eloquence. The type of oratory must improve as the quality of the audience improves. That which is superficial or untrue, the mere glitter of words, the claptrap of stirring passion to blind the reason, the specious trick of assuming what is false, and all the arts of those who would make the worse appear the better reason must become less and less successful as audiences become more intellectual. But while the human mind remains essentially the same there will be no lack of potency in the skill of a real orator to marshal facts in telling order, to illuminate them with reason, to kindle the imagination, to touch the finer thought and higher motive, and to fuse sane thinking with just feeling, so as to move, not merely the imagination, the sympathy, or the passions, but the whole man, and most of all the man who is manliest.

Injunction against Gambling.

The misleading maxim that every wrong has a remedy seems to be interpreted by some people to mean that there is a remedy in equity for all iniquity. The extraordinary development in recent years of the uses of injunction has caused much criticism, and made us familiar with the phrase "government by injunction." Yet the enlargement of this remedy has been, in the main, not so much a departure from old principles, as an application of them to new circumstances and conditions. Attempts are, nevertheless, made from time to time to extend this remedy to cases plainly outside the proper scope of equity jurisdiction. A very notable attempt of this kind was made in a late Colorado case to restrain the commission of the crime of gambling in the city of Leadville. The suit was brought by a citizen and resident property owner of the city, who was also president of the local Woman's Christian Temperance Union, to obtain an injunction against gambling in the city, on the ground that it constituted a nuisance, and that, as the city officials failed to enforce the law, there was no remedy except in equity. Although nothing was shown in respect to the location of the plaintiff's property, or as to any special injury sustained by her not common to the entire community, an injunction was obtained, whereupon a writ of prohibition was obtained from the supreme court of the state (People *ex rel.* L'Abbe *v.* District Court, 46 L. R. A. 850) to prevent further proceeding in the case, on the ground that there was no jurisdiction in equity. The court said that from the whole tenor and import of the complaint

its manifest purpose was to restrain the commission of the crime of gambling, not because of any injury to the plaintiff, but "because of its corrupting and vicious influences and its deteriorating effect upon the morals of the community." The court regarded it as a plain attempt, through the aid of the court of equity, to prevent the violation of the penal laws of the state, and to confer upon that court the administration of the criminal law "solely because the sworn officers neglect or refuse to perform their duty in that regard."

On no recognized principles of equity could an injunction in such a case be maintained. The excellence of the plaintiff's motives, the iniquity of the violators of the law, the serious damage to public morals, the shameful dereliction of the city officials, and the inadequacy of any remedy at law could not be sufficient to make a case for equity jurisdiction, unless the ancient limits of that jurisdiction are to be altogether disregarded. In Blagen *v.* Smith (Or.) 44 L. R. A. 522, and Weakley *v.* Page (Tenn.) 46 L. R. A. 553, injunctions were sustained against houses of ill fame, but in each case the house was shown to constitute a nuisance by reason of offensive sights and sounds, resulting in special damage to adjacent proprietors. Such a remedy was denied in Neaf *v.* Palmer (Ky.) 41 L. R. A. 219, where no such sights or sounds were proved. An injunction against a saloon was sustained also in Haggart *v.* Stehlin (Ind.) 22 L. R. A. 577, although no obnoxious sights or sounds were shown, because it was shown that plaintiff's property was greatly depreciated by the proximity of the saloon, which had been established in a residence portion of the city. These cases are on the border line of equity jurisdiction, but an injunction merely to protect public morals, without any showing of injury to the plaintiff, would be an extraordinary departure from the ancient rules of equity.

Liability to Connecting Carrier for Dead Freight.

A novel question has lately been decided as to the liability of a carrier for dead freight to a connecting carrier with which it has booked space for a prospective shipment that is never made. This was in the case of Patterson, Ramsey, & Co. *v.* Baltimore Steam Packet Co. (U. S. D. C. Md.). In this case a water carrier called the "Bay Line," doing business between Norfolk and Baltimore, booked 1,000 bales of cotton with an ocean line on May 19, to be shipped from Baltimore to Liverpool "late in June." The engagement was made at a fixed price for the ocean freight, without any agreement for *pro rata* division of through freights, and without disclosing who was to be the shipper. The question on the merits was whether or not this engagement was intended to constitute a contract between these carriers which would bind the "Bay Line" to bear the loss of the dead freight in case of the shipper's default, or whether in this matter the "Bay Line" was acting, not only for itself, but also as the agent of the ocean line and for their mutual interest, so that each carrier ought to bear its own loss. The question is one of those that arise only because the relations and intent of the parties are not fully expressed in the contract, but are left to be partly inferred or implied from the circumstances. In the present case the court held that the "Bay Line" engaged the space in its own name as an independent contractor, with nothing in the relations of the parties or otherwise to show that it was acting in behalf of both parties in a common undertaking. It was therefore held that the "Bay Line" was liable to the ocean line for the latter's loss on account of the failure to ship the cotton.

Since the question was as to what contract the parties had in fact made, the case on this point is important chiefly with respect to the effect in construing the agreement of the implication or inferences to be drawn from the relations of the carriers to each other. The decision will probably make carriers more cautious in engaging space of connecting carriers for prospective shipments.

Another question in the case was as to the jurisdiction of admiralty. The court held that the contract was for a purely maritime service within admiralty jurisdiction, although it was an engagement for shipment on some unspecified vessel or vessels of the ocean line, and was not for shipment on any particular vessel.

Standard Time.

The introduction into common use of what is known as standard time has raised some legal questions of general interest. The railroads of the country are so numerous, they employ so many people, and they carry so many passengers, that the question of train time is to a great portion of the people the most important practical question that arises

tricks of eloquence. The type of oratory must | the whole tenor and import of the complaint

in respect to the time of day. The combined action of all the railroads in adopting standard time has a powerful and well-nigh controlling influence upon the custom of the people in the reckoning of the hours. It is doubtless true that a very large majority of the population keep their clocks and watches set by railroad time. But, notwithstanding the widespread adoption of that system by popular usage, the courts still refuse to recognize it as the legal standard, unless made so by statute or affirmatively proved to have been adopted by custom in the community where the question arises.

In the case of Henderson v. Reynolds, 84 Ga. 159, 7 L. R. A. 327, the use of standard railroad time instead of sun time in regulating a trial was held error. In this case the sun time was faster than the railroad time, and a verdict was received after 12 o'clock on Saturday night by the sun time, though before twelve by standard time. It was decided that sun time should have been followed, but the error was immaterial, as a verdict could be received on Sunday.

In Searles v. Averhoff, 28 Neb. 668, summons was returnable before a justice at 10 o'clock A. M. Defendant failed to appear. The justice waited until 11 o'clock standard time, which was about half an hour faster than common time, and then rendered judgment by default. Defendant appeared before 11 o'clock common time, and it was held that the judgment by default was premature and invalid.

In the recent case of Jones v. German Ins. Co. (Iowa) 46 L. R. A. 860, the question was as to the expiration of an insurance policy which by its terms extended until "12 o'clock at noon" of a certain day. Fire broke out at about 11.45 o'clock A. M. of that day by common time and about 2½ minutes after 12 o'clock by standard time. It was held that the insurance was still in force. It did not appear that any statute had enacted any change in the ordinary rule which regards noon as the time when the sun crosses the meridian. There was evidence of the customary use of standard time at the place, but this was held not sufficient. The court says: "It was not only necessary to show the customary use of standard time, but that by custom of the place 'at 12 o'clock at noon' meant at 12 o'clock standard time."

The adoption of standard time for all purposes of public and private business would be a distinct gain. For railroad purposes its use is so great an advantage as to be well-nigh indispensable. But the use of one standard for railroad business and another for many other purposes results in uncertainty, confusion, and annoyance. While the customary use of standard time for all purposes may become sufficient to constitute a legal adoption thereof in any community, there must often be great uncertainty as to whether such custom has yet become sufficient for that purpose. The obvious remedy for the uncertainty and for all the difficulties of the situation is for the legislatures to make standard time legal for all purposes.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 47, Parts 3 and 4.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

Norfolk and Baltimore, booked 1,000 bales of

most important practical question that arises

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Animals.

A statute denying the owner of land any recovery for trespass thereon by animals unless he has inclosed the premises by a lawful fence is upheld in May *v.* Poindexter (Va.) 47 L. R. A. 588, against the contention that it deprives him of property without due process of law. But such a statute is held to be no defense to one who drives his cattle on to another's land because it is not fenced.

Bailment.

Bail pending appeal from conviction is held allowable in *Re* Ward (Cal.) 47 L. R. A. 466, under extraordinary circumstances, such as made it appear that the imprisonment might be fatal to the prisoner, if he was left there for three months or more.

Banks.

A bank receiving a note for collection on which it is itself an indorser is held, in Auten *v.* Manistee Nat. Bank (Ark.) 47 L. R. A. 329, not to be relieved of liability by reason of its own failure to make demand and give notice of dishonor.

Bicycles.

See also HIGHWAYS; MUNICIPAL CORPORATIONS.

Bicycles are held, in Taylor *v.* Union Traction Co. (Pa.) 47 L. R. A. 289, not to be within the meaning of an ordinance giving vehicles a right of way upon street-railway tracks in the direction in which the cars usually run over vehicles going in the opposite direction, so as to entitle a bicyclist to the right of way over a vehicle approaching from the opposite direction.

Bridges.

Defects in the railing of a bridge are held, in Walrod *v.* Webster County (Iowa) 47 L. R. A. 480, to be the proximate or efficient cause of an accident, when the railing was broken by a frightened team of horses, and the accident would not have happened if the railing had been sufficient.

a distinct gain. For railroad purposes its use is so great an advantage as to be well-nigh in-

Garnishment; of executor or administrator:—(I.) Scope of the subject; (II.) application of statutes to executors and ad-

Constructive notice which will render a city liable for injury caused by a defect in a bridge under a statute creating a liability when the city has knowledge or notice of the defects is held, in Thomas *v.* Flint (Mich.) 47 L. R. A. 499, not to arise from the mere existence of a defect for two or three days only.

Buildings.

The restriction of the height of buildings adjacent to a public square or park by statute is held, in Knowlton *v.* Williams (Mass.) 47 L. R. A. 314, when made to promote the beauty and attractiveness of the park, to be an easement annexed to the park which may be acquired under the exercise of eminent domain.

Carriers.

A licensed carrier within a city, hauling for all who require his services, is held, in Farley *v.* Lavary (Ky.) 47 L. R. A. 383, to be liable as a common carrier while carrying goods outside the city, although he could not have been compelled to take them outside the city.

Commerce.

An agent of a laundry in another state who collects garments and sends them out of the state to be washed and laundered, and afterwards redelivers them to their owners, is held, in Smith *v.* Jackson (Tenn.) 47 L. R. A. 416, not to be engaged in commerce so as to be protected against a privilege tax.

A license tax on merchandise brokers is held, in Adkins *v.* Richmond (Va.) 47 L. R. A. 583, to be invalid as a regulation of interstate commerce, when applied to a citizen and resident of the state whose occupation is solely the solicitation of orders by personal application and the exhibition of samples, for nonresident principals, in order to negotiate sales of goods not within the state.

Conspiracy.

The right of a general creditor to maintain an action on the case for conspiracy of the debtor and other persons to dispose of the debtor's property fraudulently and defeat his claim is denied in Field *v.* Siegel (Wis.) 47 L. R. A. 433, if there was no fraud in the creation of the debt. With this case is a note reviewing the authorities on the right of action by a general creditor for damages against a third party on account of fraud in disposing of the debtor's property or preventing the collection of the claim.

Constitutional Law.

A lien for wages given by statute on all the property of a corporation in preference to all other liens except recorded mortgages and deeds of trust, in case of failure to pay employees monthly, is held, in Johnson *v.* Goodyear Mining Co. (Cal.) 47 L. R. A. 338, to constitute an unconstitutional discrimination against corporations and their employees.

A statute prohibiting payment of the wages of employees of a corporation or trust employing ten or more persons in anything but lawful money is held, in State v. Haun (Kan.) 47 L. R. A. 369, to be an unconstitutional denial of due process of law, and of the equal protection of the laws.

A statute providing that eight hours shall constitute a day's work for all employees of the state or municipality is held, in *Re* Dalton (Kan.) 47 L. R. A. 380, to be a direction of the state to its own agents, and therefore to be constitutional and valid.

Contracts.

A contract to marry within three years is held, in Lewis *v.* Tapman (Md.) 47 L. R. A. 385, not to be within the provision of the statute of frauds as to agreements not to be performed within a year.

An agreement to furnish crushed stone "in such quantities as may be desired," to be "delivered on street" in a certain city, without making any more definite provision as to the quantity to be furnished, though made with one who has a contract for paving a street in that city, is held, in Hoffman *v.* Maffioli (Wis.) 47 L. R. A. 427, to be insufficient to bind the other party to furnish him at his option all the stone needed for paving such streets, since it does not bind him to take such quantity.

Corporations.

The extension of an old special charter is held, in *Re* Bank of Commerce *v.* Wiltsie (Ind.) 47 L. R. A. 489, to be within a constitutional provision against creating corporations by special act, while a renewal thereby

of special privileges and immunities is held to violate a constitutional provision against granting to any citizen or class of citizens privileges or immunities which upon the same terms shall not belong to all citizens.

Counties.

The obligation imposed by statute upon a county to pay bonds of another county from which it was formed is held, in Robertson *v.* Blaine County (C. C. App. 9th C.) 47 L. R. A. 459, to be in the nature of a specialty, and not governed by a statute as to the time for actions on contract obligations or obligations in writing.

Courts.

The authority to establish maximum water rates, conferred upon judges by statute authorizing them, on petition of selectmen or persons aggrieved, to fix maximum rates once in five years, binding upon the water company until revised or altered by the court, is upheld in *Re* Janvrin (Mass.) 47 L. R. A. 319, against a contention that it makes the court a legislative commission.

A judge whose wife is a stockholder in a corporation is held, in First Nat. Bank *v.* McGuire (S. D.) 47 L. R. A. 413, to be disqualified to sit in a cause in which the corporation is plaintiff, although there are no statutory provisions on the subject, and in that state a husband is not directly interested in the property of a wife during her lifetime.

An action for damages in a state court against shipowners and other defendants sued as joint tortfeasors is held, in Grundel *v.* Union Iron Works (Cal.) 47 L. R. A. 467, to be maintainable against the other defendants, although admiralty proceedings are pending against the shipowners who have obtained an injunction against further proceedings against them in the state court.

Covenants.

A covenant in a deed to a railroad company, by which the grantors agree to build a fence along a railroad, or not hold the company responsible for damages to stock, is held, in Brown *v.* Southern Pac. Co. (Or.) 47 L. R. A. 409, to be personal to the grantors, and not to run with the land.

Discovery.

The refusal of a daughter, after reaching majority, to obey an order for her physical examination by a physician in an action brought by her father for the loss of her services, is held, in Bagwell *v.* Atlanta Consolidated St. R. Co. (Ga.) 47 L. R. A. 486, insufficient to justify dismissal of the action.

Duress.

To constitute duress it is held, in Galusha *v.* Sherman (Wis.) 47 L. R. A. 417, that threats need not be such as are reasonably necessary to control by fear the free-will power of a person of ordinary firmness and courage, but the question in each case is said to be, Was the person so acted upon by the threats as to be bereft of the quality of mind essential to contract?

Evidence.

A presumption that the law merchant as to the protest of a draft prevails in Asiatic Turkey was held, in Aslanian *v.* Dostumian (Mass.) 47 L. R. A. 495, to be one which the court could not indulge.

Declarations made by a man as to his own history and family relations are held, in Young *v.* State (Or.) 47 L. R. A. 548, to be admissible after his death for the purpose of identifying him, in an action against the state to recover the proceeds of his property, which had been escheated.

Fright.

A recovery for sickness due to the purely internal operation of fright caused by a negligent act is denied in Smith *v.* Postal Teleg. Cable Co. (Mass.) 47 L. R. A. 323, even if the negligence was gross, and the party in fault ought to have known that the result would follow his act.

But, on the other hand, physical injury resulting from fright or other mental shock caused by wrongful act or omission is held, in Gulf, C. & S. F. R. Co. *v.* Hayter (Tex.) 47 L. R. A. 325, to be sufficient to sustain a recovery of damages, if the negligence or wrong was the proximate cause of the injury, and the injury ought, in the light of all the circumstances, to have been foreseen as a natural or probable consequence thereof.

Garnishment.

Garnishment against an executor to reach a debt of the decedent before decree for distribution of assets is denied in Hudson *v.* Wilber (Mich.) 47 L. R. A. 345, in the absence of statutory permission, although the debt has been placed in judgment in a suit revived against the executor.

Hackmen.

The right of hackmen and private carriers to solicit business at a depot without discrimination is sustained in Godbout *v.* St. Paul Union Depot Co. (Minn.) 47 L. R. A. 532, so far as relates to all points outside the depot, but the right of the carrier to grant special and exclusive privileges to solicit such business within the depot is sustained.

Highways.

The right of a city to discharge a sewer into a tailrace belonging to an individual, where it runs through a culvert under a highway, is denied in Nevins *v.* Fitchburg (Mass.) 47 L. R. A. 312.

A substantially-built dwelling house, with a brick foundation extending into a street, is held, in Valparaiso *v.* Bozarth (Ind.) 47 L. R. A. 487, to constitute a public nuisance which may be abated without any notice or request to remove it, when the proceeding is brought against the person who erected the building with constructive notice of the street line, although such person was only a lessee, and acted in good faith.

The right of a telephone company to string wires in a highway is held, in Wyant *v.* Central Teleph. Co. (Mich.) 47 L. R. A. 497, to include the right to do the necessary trimming of trees in the highway in a proper manner, without first giving the landowner an opportunity to do it.

Husband and Wife.

A breach of promise of marriage is held, in Sanders *v.* Coleman (Va.) 47 L. R. A. 581, to be excused when, without any fault on his part, the prospective husband has developed a grave malady of such a character that marriage might endanger his life or health.

A right of action by a wife against another woman for the alienation of her husband's affections is denied in Houghton *v.* Rice (Mass.) 47 L. R. A. 310, if such alienation is not accompanied with adultery.

Infants.

An infant who has bought a bicycle on the instalment plan is held, in Rice *v.* Butler (N. Y.) 47 L. R. A. 303, to be under obligation to account for its use, and for deterioration in its value while in his possession, if he rescinds the purchase.

The disaffirmance of a conveyance by an infant is upheld in Bullock *v.* Sprowls (Tex.) 47 L. R. A. 326, without restoring the consideration received for the property, when it is not in his possession or control upon arriving at full age, but has been dissipated by him while still a minor.

Injunction.

An injunction to bar the entrance of a person to office is denied in State *ex rel.* McCaffery *v.* Aloe (Mo.) 47 L. R. A. 393, on the ground that equity has no jurisdiction of such a suit. The court also holds that the chancery court has no power to protect purely political rights, such as the rights of voters.

A novel suit for an injunction against the removal of a building from a town, on the ground that it would cause an addition to the burden of the taxpayers remaining, was unsuccessful in St. Lawrence *v.* Gross (S. D.) 47 L. R. A. 572, although the situation appeared to be a serious one, and the prospect was that the town might not be able to pay its indebtedness.

Insurance.

A policy of insurance against loss or damage by wind storms, cyclones, or tornadoes is held, in Holmes *v.* Phenix Ins. Co. (C. C. App. 8th C.) 47 L. R. A. 308, not to cover damage by hail.

A provision in an insurance policy against other insurance is held, in United Firemen's Ins. Co. *v.* Thomas (C. C. App. 7th C.) 47 L. R. A. 450, sufficient to override any supposed agreement to consent to such other insurance, which is based on the fact that the insurance agent knew of the intention to procure it, where the agent was an insurance broker acting for the insured.

run with the land.

natural or probable consequence thereof.

Intoxicating Liquors.

An ordinance making it penal to receive intoxicating liquors into a municipality without paying a specific tax for the privilege of so doing, although the liquors may have been lawfully purchased elsewhere, is held, in Henderson *v.* Heyward (Ga.) 47 L. R. A. 366, not to be authorized by the general-welfare clause in the municipal charter.

Judgment.

The restriction upon the lien of judgments of Federal courts which a state statute attempted to impose was held, in Blair *v.* Ostrander (Iowa) 47 L. R. A. 469, to be ineffectual prior to the act of Congress of August 1, 1888, but was held operative thereafter.

A decree of divorce obtained in another state is held, in Felt *v.* Felt (N. J.) 47 L. R. A. 546, to be entitled to full force and effect, although obtained against a nonresident after substituted service in accordance with statutes was had, and the defendant actually notified, provided that the ground of the divorce was such as the public policy of the state in which it is sought to be enforced will recognize.

Justice of the Peace.

A vacancy in the office of justice of the peace, to be filled by appointment, is held, in State *ex rel.* Crow *v.* Smith (Mo.) 47 L. R. A. 560, not to be created by an election which results in a tie vote.

Libel.

A communication by a principal to his agent, touching the business of the agency, is held, in Nichols *v.* Eaton (Iowa) 47 L. R. A. 483, not to be actionable without proof of malice.

Mines.

A person excluded by a cotenant from a mine in which he has a lease of an undivided interest is held, in Paul *v.* Cragnas (Nev.) 47 L. R. A. 540, to be entitled to maintain an action for damages, and not to be limited to an action for partition or an accounting of rents and profits.

Mortgages.

A chattel mortgage on all the stock of goods of a merchant is upheld in Noyes *v.* Ross (Mont.) 47 L. R. A. 400, although it contained a provision for the retention of possession by the mortgagor, with the right to sell the goods, and that he may retain his necessary living expenses out of the proceeds, when he has to account to the mortgagee for the balance.

Municipal Corporations.

The failure to enact or enforce an ordinance prohibiting the riding of bicycles on sidewalks is held, in Jones *v.* Williamsburg (Va.) 47 L. R. A. 294, insufficient to make a municipality liable for injury to a person struck by a bicycle ridden on the sidewalk.

Officers.

Executive officers of the state government are held, in State *ex rel.* New Orleans Canal & B. Co. *v.* Heard (La.) 47 L. R. A. 512, to have no right to decline the performance of purely ministerial duties on the ground that the statute imposing them contravenes the Constitution.

Parent and Child.

A mother is held, in Keller *v.* St. Louis (Mo.) 47 L. R. A. 391, not to be entitled to damages for injuries to a minor child the care and custody of which have been given to her by a divorce decree, where the father is still charged with the duty of supporting the child.

Principal and Agent.

An agent who forwards collections to a subagent and directs him to make any other use of the funds than an application thereof for the benefit of the principal, is held, in Milton *v.* Johnson (Minn.) 47 L. R. A. 529, liable to the principal for such misuse of the funds by the subagent.

Public Improvements.

Paving a street at the expense of the adjoining property is held lawful, in Adams *v.* Beloit (Wis.) 47 L. R. A. 441, notwithstanding the fact that the property has previously been assessed for a former pavement.

The fact that property assessed for a street

riage might endanger his life or health.

A right of action by a wife against another

where the agent was an insurance broker acting for the insured.

improvement has not been benefited thereby, and that the improvement has not been completed, is held, in Rogers *v.* St. Paul (Minn.) 47 L. R. A. 537, insufficient to entitle the property owner to repayment by the city of the amount which he has paid, where the money paid into the treasury has been expended on the improvement.

An assessment for a street improvement under a resolution declaring the improvement expedient is held, in Norfolk *v.* Young (Va.) 47 L. R. A. 574, to be unconstitutional for lack of due process of law, where the notice did not designate any tribunal, place, or time where the party could be heard.

Railroads.

Authority of railroad commissioners to order a company to build and maintain a depot or station house is held, in State *ex rel.* Tompkins *v.* Chicago, St. P. M. & O. R. Co. (S. D.) 47 L. R. A. 569, to be conferred by a statute authorizing them to notify the company of improvements which they adjudge to be proper.

Specific Performance.

A contract to expend $10,000 in "opening and developing" mining property which consisted of a large number of mining claims, both quartz and placer, and in erecting a ten-stamp quartz mill, is held in Stanton *v.* Singleton (Cal.) 47 L. R. A. 334, to be one which equity will not enforce by specific performance.

State Institutions.

A state hospital created purely for governmental purposes, under the exclusive ownership and control of the state, is held, in Maia *v.* Eastern State Hospital (Va.) 47 L. R. A. 577, to be not liable for injury to an inmate by negligence of the persons in charge.

Taxes.

The constitutional mandate of equality of taxation as near as may be is held, in Drew *v.* Tifft (Minn.) 47 L. R. A. 525, to be applicable to inheritance taxes, and to be violated by exemptions which discriminate between different classes of persons.

Voters and Elections.

The power to decide between candidates for justice of the peace who have an equal number of votes is held in State, Crow, *v.* Kramer (Mo.) 47 L. R. A. 551, to be in violation of the Constitution, which provides for the election of such officers, without any provision for deciding the tie, while it does make such provision in respect to other officers.

New Books.

"American Law." A Treatise on the Jurisprudence, Constitution, and Laws of the United States. By James DeWitt Andrews. (Callaghan & Co., Chicago, Ill.) 1 Vol. $6.50.

"Finch's Insurance Digest for '99." By Guilford A. Deitch. (The Rough Notes Co., Indianapolis, Ind.) Vol. 12. $3.

"My Mysterious Clients." By Harvey Scribner. (The Robert Clarke Co., Cincinnati, Ohio.) Cloth, $1.25.

"Bicknell & Seager's Division Courts' Act," 2d ed. (The Carswell Co., Toronto, Ont.) Half Law Calf, $8.50.

"Jacobs & Chaney's Michigan Digest." Vol. IV. (Callaghan & Co., Chicago, Ill.) $6.

"Complete Verbatim Reprint of All the English Reports A. D. 1307 to 1865." (The Boston Book Co., Boston, Mass.) 150 Vols. $6 per Vol. House of Lords Reports separate, 11 Vols. $7.50 per Vol.

"Banks and Banking." By John M. Zane. (T. H. Flood & Co., Chicago, Ill.) 1 Vol. $6.

"Thompson's New Ohio Citations." By J. W. Thompson. (The Bowen-Merrill Co., Indianapolis, Ind.) 1 Vol. $10

Recent Articles in Law Journals and Reviews.

"Constitutional Aspects of the Federal Control of Corporations."—8 American Lawyer, 111.

"Are Foodstuffs Contraband?"—8 American Lawyer, 108.

"The Legal Education of Women."—61 Albany Law Journal, 325.

"Liability of Master for Injuries to Servants."—50 Central Law Journal, 425.

"What is an Accident?"—61 Albany Law Journal, 344.

and profits.

The fact that property assessed for a street

"Trespass on Highways."—61 Albany Law Journal, 343.

"May an Estate be Deprived of Its Usual Incidents at the Will of the Creator?"—39 American Law Register, N. S. 257.

"The Constitution and Our New Possessions."—61 Albany Law Journal, 309.

"The Limitation of British Shipowners' Liability."—25 Law Magazine and Review, 337.

"Corporal Punishment."—25 Law Magazine and Review, 261.

"The Effect of the Statute of Frauds upon Contracts in General."—8 American Lawyer, 209.

"Indictment; Lesser Offense; Inclusion."—50 Central Law Journal, 348.

"The Void and Voidable in Contracts."—50 Central Law Journal, 345.

"Jurisdiction of Civil Courts in Suits for Infringement of Copyright."—10 Madras Law Journal, 59.

"The Constitution of the Chartered High Courts."—10 Madras Law Journal, 1.

"The Value of Roman Law."—39 American Law Register, N. S. 280.

"The Porto Rico Tariffs of 1899 and 1900." 9 Yale Law Journal, 297.

"The United States Bankruptcy Law of 1898."—9 Yale Law Journal, 287.

"A Foreign Sovereign in an American Court."—9 Yale Law Journal, 283.

The Humorous Side.

MUSTN'T SHOOT IT ANYWAY.—The American Lawyer says that the Kentucky legislature evidently does not believe in the "didn't know it was loaded" excuse, as it passed an act some time ago which read as follows: "It shall be unlawful for any person to fire or discharge at random any deadly weapon, whether said weapon be loaded or unloaded."

DOG LAW IN IOWA.—A little Iowa girl was bitten by a dog at which she had thrown sticks and stones a few months before, and this was pleaded in extenuation of damages; but the court laid down the doctrine that "a dog has no right to brood over its wrongs and remember in malice."

AN EXTRA FOR A MULE.—In "a lawsuit arising out of the unlawful acts of a disorderly mule" the opinion says he was found "loitering about the streets . . . without any apparent business, no visible means of support, and no evidence of ownership except a yoke on his neck," which was evidence that "the mule had been at some time in a state of subjection, but did not indicate to whom." Being arrested and taken to the lockup, after five days' delay an advertisement was published for two days, and then the mule was sold. This notice was held insufficient, on the ground that "no owner would feel any great sense of loss in so short a time." On the question of delay before publishing the notice, which the ordinance required to be published immediately, the court said: "The argument is that the word 'immediately,' as used in the ordinance, does not mean 'instantaneously;' that the poundkeeper must have sufficient time to shut the pound gate, so as to keep the mule in, before he starts to the printing office; that, after he does start, he may proceed in a brisk walk, and is not required to run; that after he gets there time must be allowed to set up the matter in type, and there must then be a delay until the hour when the paper is printed and ready for distribution; and that the poundkeeper is not required to get out an extra. We are satisfied the learned trial judge did not mean to require such despatch as this."

A MONGREL PREACHER.—The moral quality of a one-horse preacher with a divided allegiance is thus described in a late case: "The evidence tends to show that while Pa M— does a little preaching, trying to gather the lost sheep into the fold, and has one eye on the pearly gates, where the wicked cease from troubling and the weary are at rest, he keeps the other to windward in an endeavor to make friends with the Mammon of unrighteousness. While trying to serve two masters, he gives his present allegiance to the one he can see, taste, hear, feel, and smell, and puts the other off with a little preaching and the promise of a more convenient season."

The difficulty which the preacher exhibited in testifying to the truth leads the court to moralize as follows: "When a man only preaches a little, and undertakes to deal in the transitory things of this life, it is well always to have writings with him, as memory is one of the worldly things that may be counted uncertain. It is not to be trusted, for it is easily overcome by self interest."

lated by exemptions which discriminate between different classes of persons.

"What is an Accident?"—61 Albany Law Journal, 344.